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12 and as trustee of the Donald E. Vanni and Sharon L. Vanni
13 Revocable Inter Vivos Trust; DONALD E. VANNI AND
14 SHARON L. VANNI REVOCABLE INTER VIVOS
15 TRUST; and CHRIS VANNI

16 UNITED STATES BANKRUPTCY COURT
17
18 NORTHERN DISTRICT OF CALIFORNIA
19
20 SAN JOSE DIVISION

21 In re:

22 AMIR SAFAKISH,

23 Debtor,

Case No. 18-50769 MEH 13

Chapter 13

**MOTION OF THE VANNI CREDITORS
TO DISMISS CASE OR, IN THE
ALTERNATIVE, CONVERT CHAPTER
13 CASE TO CHAPTER 7 PURSUANT TO
11 U.S.C. § 1307(c)**

Date: June 14, 2018
Time: 9:30 AM
Courtroom: 3020
Location: 280 South First Street
San Jose, CA 95113

Judge: Hon. M. Elaine Hammond

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1 The Motion of Donald E. Vanni, individually and as trustee of the Donald E. Vanni and
2 Sharon L. Vanni Revocable Inter Vivos Trust, Donald E. Vanni And Sharon L. Vanni Revocable
3 Inter Vivos Trust, and Chris Vanni (collectively, “Moving Parties” or “Vanni Creditors”) to
4 dismiss the above-captioned case or, in the alternative, convert the above-captioned Chapter 13
5 case to Chapter 7 (the “Motion”) respectfully represents as follows:

6 Notice is hereby given that on June 14, 2018 at 9:30 AM or as soon thereafter as the
7 matter may be heard at the United States Bankruptcy Court, 280 South First Street, courtroom
8 number 3020, San Jose, California, Moving Parties will move the Court for an order dismissing
9 the above-captioned case or, in the alternative, converting the Debtor’s Chapter 13 case to
10 Chapter 7 pursuant to 11 U.S.C. §1307(c).

11 **I. STATEMENT OF FACTS**

12 Creditor and moving party Donald E. Vanni is a trustee of the Defendant Donald E. and
13 Sharon L. Vanni Revocable Inter Vivos Trust (the “Vanni Trust”). Creditor and moving party
14 the Vanni Trust is the owner of Unit 2, a commercial condominium located at 16170 Vineyard
15 Boulevard, Morgan Hill, California (the “Vanni Unit”). Creditor and moving party Chris Vanni
16 is attorney-in fact for the Vanni Trust and is a member of the Board of Directors and President of
17 the Morgan Hill Vineyard Owners’ Association (the “Association”). (Declaration of Chris
18 Vanni (“Vanni Decl.”), ¶¶ 1, 3; Declaration of Peter M. Rehon (“Rehon Decl.”), ¶ 3.)

19 The Debtor Amir Safakish (the “Debtor”) owns Unit 1, a commercial condominium at the
20 Vineyard also located at 16170 Vineyard Boulevard, Morgan Hill, California (the “Debtor’s
21 Unit”). The Debtor is also a member of the board of directors of the Association and assistant
22 secretary. (Vanni Decl., ¶ 3; Rehon Decl., ¶ 3.)

23 The Association is an association formed to act as the owners’ association for the
24 Vineyard, which is a common interest development formed and operated under and pursuant to
25 California law. The Debtor and the Vanni Trust are the only members and shareholders of the
26 Association. The Vanni Trust is the majority shareholder (with an approximately 70%
27 ownership interest), and the Debtor is a minority shareholder (with an approximately 30%
28 ownership interest). Donald E. Vanni is a director and Chris Vanni is an officer and director of

1 the Association on behalf of the Vanni Trust (the “Vanni Directors”). The Debtor is also an
2 officer and director of the Association. (Vanni Decl., ¶ 3; Rehon Decl., ¶ 3.)

3 Moving Parties are also defendants in a lawsuit filed by the Debtor on May 9, 2016 in the
4 Santa Clara Superior Court entitled *Amir Safakish v. Donald E. Vanni, et al.* (the “Safakish
5 Action”). The Debtor’s original complaint alleged six causes of action against the Moving
6 Parties, as well as Sharon L. Vanni, the wife of Moving Party Donald Vanni and mother of
7 Moving Party Chris Vanni. The Court dismissed Sharon L. Vanni as a defendant on March 17,
8 2017. The Moving Parties demurred to the original complaint, which the Court sustained in part
9 and overruled in part on December 20, 2016. The Debtor filed his first amended complaint on
10 February 8, 2017, alleging twelve causes of action against Moving Parties and the Association.
11 The Moving Parties demurred again, which the Court sustained with respect to the purported
12 derivative claims on grounds of uncertainty. The Debtor then filed his second amended
13 complaint on or about June 5, 2017, alleging eighteen causes of action against Moving Parties
14 and the Association. (Vanni Decl., ¶¶ 1, 3; Rehon Decl., ¶¶ 4, 5, and 6, Ex. 1.)

15 The litany of grievances alleged in his second amended complaint is a testament to the
16 Debtor’s unhappiness with the actions taken by the Association and the Moving Parties relative
17 to their management of the Association and the Vineyard. As the Honorable Mary E. Arand, the
18 judge presiding over the Safakish Action, noted in her May 12, 2017 demurrer order, “Plaintiff’s
19 central grievance, although taking many forms, is that he wanted to pay less out of his own
20 pockets for maintenance of the Vineyard.” The Debtor’s discovery responses complain that the
21 Moving Parties hired vendors and various contractors who have “consistently overcharged for
22 their services and in many cases performed services poorly.” The Debtor also alleges in his
23 second amended complaint that he does not believe the Association is required by California law
24 and that it should be rescinded. (Rehon Decl., ¶ 6.)

25 The Moving Parties contend that they were authorized to make the decisions complained
26 of in the second amended complaint by the Association’s governing documents. The 1997 and
27 2016 CC&R’s provide that the voting power is based on the square footage of the Subject
28 Building, and the unit owned by Moving Party Vanni Trust accounts for 10,752 of the Subject

1 Building's 15,360 square feet, or approximately 70%. It is undisputed that the Debtor is a
2 minority shareholder in the Association and that the Vanni Trust is the majority shareholder.
3 Section 3.1 of the 1997 Bylaws empowers the directors of the Association to "do any and all
4 things" which "may be necessary for or incidental to the exercise of the express powers of the
5 Association or for the peace, health, comfort, safety or general welfare of the Members." (Rehon
6 Decl., ¶ 7.)

7 Additionally, the Moving Parties contend that the decisions made on behalf of the
8 Association were the exercise of valid business judgments, and that Section 8.4 of the 1997
9 Bylaws precludes a director's liability for any such decision(s). The Moving Parties have cross-
10 complained against the Debtor, alleging counts for declaratory relief and equitable indemnity.
11 The Moving Parties' declaratory relief claims ask that the state court find that the Association
12 and its governing instruments were validly formed, and that all of the actions complained of in
13 the Debtor's second amended complaint were within the scope of the business judgment rule.
14 (Rehon Decl., ¶ 8.)

15 The Association has also cross-complained, alleging counts for judicial foreclosure,
16 breach of fiduciary duty, collection of delinquent assessments, and declaratory relief. (Rehon
17 Decl., ¶ 9.)

18 As a result of the Debtor's failure to pay his assessments as part of his ownership of the
19 Debtor's Unit, the Association, after due and proper notice in accordance with California law and
20 the documents governing the Association, recorded an Assessment lien on February 9, 2017.
21 The total amount owing on the Association's Assessment Lien as of the Petition date is
22 \$135,337.19. (Vanni Decl., ¶ 8, Exx. 8 and 9.)

23 On December 4, 2017, Moving Parties received notice that Debtor's attorney in the
24 Safakish Action, Brad Mokri, was withdrawing as counsel, and that Debtor was substituting in *in*
25 *propria persona*. (Rehon Decl., ¶ 10.)

26 In January 2018, the Debtor engaged a new attorney, Jeffery Perkins, to represent him in
27 trying to resolve this litigation, and in early February 2018, Debtor and the Vanni Creditors, and
28 their respective counsel, entered into and signed a written mediation agreement (the "Mediation

1 Agreement”) selecting a mediator, Sanford Kingsley, Esq. (the “Mediator”) and agreeing to the
2 confidentiality of the mediation process. (Rehon Decl., ¶ 11, Ex. 2.)

3 A mediation between the parties commenced on February 14, 2018, and Moving Parties,
4 the Association, their counsel, the Debtor and his counsel attended this mediation. The
5 mediation lasted all day, and while it did not result in a settlement, the parties agreed to continue
6 the mediation to March 19, 2018. (Rehon Decl., ¶ 12.)

7 On March 19, 2018, the Moving Parties, the Association, their counsel, the Debtor and
8 his counsel attended a second full day of mediation with the mediator, at the conclusion of which
9 the parties negotiated and signed a written term sheet (the “Settlement Term Sheet”)
10 memorializing a settlement of this matter. As part of the Settlement Term Sheet, the Debtor
11 agreed to the filing of an amended assessment lien against the Debtor’s Unit in the amount of
12 \$275,000 and also agreed to pay \$12,000 to the Association on April 1, 2018. (Vanni Decl., ¶
13 10; Rehon Decl., ¶ 13, Ex. 3.)

14 The Term Sheet also requires the parties to take action to record an amended lien against
15 Debtor’s condominium unit in the amount of \$275,000 (which would amend the Association’s
16 secured claim of \$135,337.19 as of the Petition date to add an additional \$139,662.81 as of the
17 petition date) to secure payment of a portion of the settlement due, and also requires Debtor to
18 sell his unit and requires the Vanni Creditors to buy Debtor’s unit if he does not sell the unit. All
19 of these actions are time-sensitive and market-dependent. For instance, if the amended lien is
20 not recorded promptly, its lien priority may be jeopardized. (Rehon Decl., ¶ 15.)

21 The Settlement Term Sheet specifically provides, among other things, that:

- 22 (a) “The Association’s current lien is amended to a total of \$275,000, which will be
23 placed on Mr. Safakish’s unit” (Paragraph 1.)
- 24 (b) “Mr. Safakish agrees to prepay 12 months worth of assessments at a rate of
25 \$1,000/month due upon execution of the settlement agreement for \$12,000”
26 (Paragraph 2.)
- 27 (c) “The defendants will prepare a formal settlement agreement, enforceable under
28 CCP section 664 et seq. including dismissal of all claims, and with mutual

1 releases under 1542 except for obligations created under the settlement
2 agreement....” (Paragraph 5.)

3 (d) “Should the parties not execute a formal settlement agreement, this agreement
4 shall be binding and enforceable upon execution under CCP 664.6.” (Paragraph
5 5.)

6 (Rehon Decl., ¶ 15.)

7 The following day, on March 20, 2018, Debtor sent an email indicating that he was not
8 going to comply with the Settlement Term Sheet after all. Specifically he stated that he wished
9 to “cancel it or change[]” it. (Vanni Decl., ¶ 11; Rehon Decl., ¶ 14, Ex. 4.)

10 On April 4, 2018, prior to 10:00 a.m., counsel for the Moving Parties gave notice to the
11 Debtor and his counsel, Jeffery Perkins, that the Moving Parties and the Association would apply
12 to the Superior Court to obtain an order shortening time to set a hearing on a motion to enforce
13 the Settlement Term Sheet as a judgment pursuant to California Code of Civil Procedure section
14 664.6. (Rehon Decl., ¶ 16.)

15 Later that same day, April 4, 2018, the Moving Parties were notified that the Debtor had
16 filed his petition for relief under Chapter 13 of the Bankruptcy Code. (Rehon Decl., ¶ 17.)

17 On May 2, 2018, the Debtor filed his schedules, Statement of Affairs, and Chapter 13
18 plan. On his Statement of Affairs, in response to questions 1 and 3, the Debtor claimed that he
19 was not married and also claimed that he had not, within the last 8 years, ever lived with a
20 spouse in a community property state. (Vanni Decl., ¶ 4.)

21 The Debtor’s statements regarding his marital status are contradicted by the two deeds
22 recorded against his residence, and four deeds of trust recorded against his residence and the
23 Debtor’s Unit, all of which reflect that he holds title to both properties as a married man. The
24 four deeds of trust represent representations the Debtor made to his secured creditors, Bank of
25 America, Bank of the West, Wells Fargo Bank, and Keypoint Credit Union, all federally insured
26 financial institutions, that he was married, which representations were consistent with
27 representations the Debtor made to the Moving Parties that he was, and at all relevant times, has
28 been, a married man. (Vanni Decl., ¶ 5, Exx. 1-6.)

1 On his Schedule D, filed on May 2, 2018, the Debtor failed to disclose the Association's
2 assessment lien. The amount of this assessment lien as of the petition date, \$135,337.19, would
3 cause his secured claims to total \$1,204,083.15 which would exceed the limit for secured claims
4 under 11 U.S.C. section 109(e), which is \$1,184,200. (Vanni Decl., ¶¶ 8-9, Exx. 8-9.)

5 On his Schedules E/F, filed on May 2, 2018, the Debtor failed to disclose the Settlement
6 Term Sheet and his consent to the recordation of an amended assessment lien in the amount of
7 \$275,000, the unsecured amount of which is \$139,662.81 as of the petition date. Debtor also
8 failed to disclose his obligation to pay \$12,000 under the Settlement Term Sheet. When adding
9 these amounts to the amounts disclosed in the Debtor's schedules E/F, the Debtor's unsecured
10 claims total \$326,134.81, which is still within the statutory limit for unsecured claims, \$394,725,
11 specified in 11 U.S. section 109(e). (Vanni Decl., ¶ 14, Ex. 9.)

12 However, in the Debtor's Schedule E/F, the Debtor also states that he owes no taxes to
13 the Franchise Tax Board for the years 2015, 2016, and 2017, and fails to list any taxes owing to
14 the Internal Revenue Service for the same years. Given the fact that the Debtor just lost an
15 appeal of an IRS determination that he owed back taxes and penalties for the years 2006 and
16 2007 that the Debtor claims totals \$71,000, it is highly unlikely that the Debtor owed no taxes to
17 either the FTB or the IRS for the years 2015, 2016, and 2017. (Rehon Decl., ¶ 19, Ex. 7.) Given
18 the Debtor's failure to disclose material secured and unsecured claims, and given his current tax
19 situation, it is likely that his unsecured tax liability for the years 2015, 2016, and 2017 will cause
20 his unsecured claims to exceed the statutory limit of \$394,725 specified in 11 U.S.C. section
21 109(e).

22 **II. ARGUMENT**

23 **A. The Bankruptcy Court may dismiss or convert a Chapter 13 Case to Chapter** 24 **7 for cause.**

25 Bankruptcy Code §1307(c) provides that the court may convert a chapter 13 case to
26 chapter 7, or may dismiss a chapter 13 case, whichever is in the best interests of creditors and the
27 estate, upon request of a party in interest. (11 U.S.C. §1307(c).) Subsection 1307(c) enumerates
28 eleven specific occurrences which constitute sufficient cause for the dismissal or conversion of a

1 chapter 13 case to chapter 7, but those grounds are not exhaustive. For example, courts have held
2 that a chapter 13 case may be converted to chapter 7 or dismissed if the case was filed in bad faith
3 or if the debtor is not eligible for relief under chapter 13 because his debts exceed the limits
4 specified in Section 109(e). (See, for example, *In re Cabral*, 285 B.R.563 (1st Cir. B.A.P.2002),
5 wherein the appellate panel affirmed the decision of the bankruptcy court to convert a chapter 13
6 case to chapter 7 based upon the debtor's bad faith, and *Rudd v. Laughlin*, 866 F.2d 1040 (8th
7 Cir. 1989), wherein the appellate court affirmed the bankruptcy court's order converting a
8 chapter 13 case to chapter 7 because the debtors' debts exceeded the limits specified in Section
9 109(e).)

10 As will be shown below, the Debtor is not eligible for chapter 13 relief, the Debtor did
11 not file his Petition in good faith, and dismissal of this case or at least conversion to chapter 7 is
12 in the best interests of creditors and the estate.

13 **B. The Debtor is not eligible for relief under Chapter 13 because his secured**
14 **debts are not less than \$1,184,200, as required by 11 U.S.C. §109(e).**

15 On his Schedule D, filed on May 2, 2018, the Debtor fails to disclose the Association's
16 assessment lien. The amount of this assessment lien, \$135,337.19, would cause his secured
17 claims to total \$1,204,083.15 which would exceed the limit for secured claims under 11 U.S.C.
18 section 109(e), which is \$1,184,200. For this reason alone the Debtor is not eligible for Chapter
19 13 relief.

20 **C. The Debtor also is likely not eligible for relief under Chapter 13 because his**
21 **noncontingent, liquidated, unsecured debts are not less than \$394,725, as**
22 **required by 11 U.S.C. §109(e).**

23 Only an individual that owes, on the date of the filing of the petition, noncontingent,
24 liquidated, unsecured debts of less than \$394,725 may be a debtor in a chapter 13 case. (11
25 U.S.C. §109(e).) There is no dispute that the Debtor failed to disclose his obligation to pay
26 \$275,000 under the Settlement Term Sheet of which \$139,662.81 is unsecured, and also failed to
27 disclose \$12,000 owing under the Settlement Term Sheet, which is also unsecured,
28 noncontingent, and liquidated.

1 **1. Moving Parties' Claims Are Noncontingent**

2 It is well-settled that “a debt is noncontingent if all events giving rise to liability occurred
3 prior to the filing of the bankruptcy petition.” (*In re Nicholes*, 184 B.R. 82, 88 (9th Cir. B.A.P.
4 1995), citing *In re Fostvedt*, 823 F.2d 305, 306 (9th Cir. 1987).) “Thus, debts of a contractual
5 nature are not contingent.” (*Nicholes*, 184 B.R. at 88.) For instance, it is well-settled that a debt
6 owed by a guarantor is noncontingent where the principal obligor has defaulted. (*In re Enriquez*,
7 315 B.R. 112, 122 (Bankr.N.D.Cal. 2004).) Liability on a contract is noncontingent once the
8 contract is made, even if liability is subject to being avoided by some later occurrence. (*In re*
9 *Albano*, 55 B.R. 363, 366-367 (N.D.Ill. 1985).)

10 In the present case, the Debtor agreed to allow an amended assessment lien to be filed
11 against the Debtor's Unit in the amount of \$275,000 of which is \$139,662.81 is unsecured. The
12 Debtor also agreed to pay \$12,000 under the settlement that he did not disclose. These amounts
13 were agreed to be enforceable by judgment under state law, Code of Civil Procedure section
14 664.6. Moving Parties' and the Association's claims are noncontingent.

15 **2. Moving Parties' Claims Are Liquidated.**

16 While the Debtor may now find his agreement to settlement unacceptable to him, the
17 Ninth Circuit has held that a disputed debt is nevertheless liquidated if the amount due is readily
18 determinable. In *In re Slack*, 187 F.3d 1070 (9th Cir. 1999), the Ninth Circuit stated:

19 We hold that a debt is liquidated if the amount is readily ascertainable,
20 notwithstanding the fact that the question of liability has not been fully
21 decided. . . So long as a debt is subject to ready determination and
22 precision in computation of the amount due, then it is considered
liquidated and included for eligibility purposes under §109(e), regardless
of the dispute.

23 (*Id.* at 1075.) “Therefore, the concept of a liquidated debt relates to the amount of liability, not
24 the existence of liability.”(*Id.* at 1074, citing *United States v. Verdunn*, 89 F.3d 799, 802 (11th
25 Cir. 1996).) A disputed debt is nonetheless liquidated if the amount is capable of “ready
26 determination and precision in computation of the amount due.” (*In re Sylvester*, 19 B.R. 671,
27 673 (9th Cir. B.A.P. 1982).) In *Sylvester*, the Bankruptcy Appellate Panel rejected the view that
28 “a debt is not liquidated if there is a substantial dispute regarding liability or amount”. (*Id.* at

1 673-674.) “The test for ‘ready determination’ is whether the amount due is fixed or certain or
2 otherwise ascertainable by reference to any agreement or by a simple computation.” (*Nicholes*,
3 *supra*, 184 B.R. at 89.) “It is important to emphasize today that the bottom line is that §109(e)
4 calculations depend on ‘ready determination,’ not upon the existence or absence of disputes.”
5 (*Nicholes*, *supra*, 184 B.R. at 91.)

6 In the present case, Moving Parties’ claims, even if disputed by the Debtor, are
7 nevertheless liquidated since the claim amounts can be readily and precisely determined by an
8 arithmetic calculation of the amounts owed by the Debtor.

9 **3. The Debtor’s failure to schedule his 2015, 2016, and 2017 tax liability**
10 **to the IRS and the FTB is highly suspect, and it is likely that this**
11 **liability will cause the Debtor’s unsecured claims to exceed the**
statutory limit for Chapter 13.

12 As noted above, the Debtor also states in his schedules that he owes no taxes to the
13 Franchise Tax Board for the years 2015, 2016, and 2017, and fails to list any taxes owing to the
14 Internal Revenue Service for the same years. Given the fact that the Debtor just lost an appeal of
15 an IRS determination that he owed back taxes and penalties for the years 2006 and 2007 that the
16 Debtor claims totals \$71,000, it is highly unlikely that the Debtor owed no taxes to either the
17 FTB or the IRS for the years 2015, 2016, and 2017. Given the Debtor’s failure to disclose
18 material secured and unsecured claims, and given his current tax situation, it is likely that his
19 unsecured tax liability for the years 2015, 2016, and 2017 will cause his unsecured claims to
20 exceed the statutory limit of \$394,725 specified in 11 U.S.C. section 109(e).

21 For this additional reason, the Debtor is also likely not eligible for Chapter 13 relief.

22 **D. The Debtor’s Plan was not proposed in good faith, and the action of the**
23 **Debtor in filing the Petition was not in good faith, in violation of 11 U.S.C.**
§1325(a)(3) and (a)(7).

24 In *In re Eisen*, 14 F.3d 469 (9th Cir. 1994), the court stated that the same standard for
25 determining the existence of bad faith applies whether the court is determining if a petition has
26 been filed in bad faith or whether a plan has been proposed in bad faith. Bad faith is determined
27 based on the totality of the circumstances, as stated by the Ninth Circuit in *In re Goeb*, 675 F.2d
28

1 1386 (9th Cir. 1982), and the factors to be considered were laid out by the Ninth Circuit in *In re*
2 *Leavitt*, 171 F.3d 1219 (9th Cir. 1999). The four *Leavitt* factors are:

- 3 (1) Whether the debtor misrepresented facts in his or her petition or plan,
4 unfairly manipulated the Bankruptcy Code, or otherwise filed the Chapter
5 13 petition or plan in an inequitable manner;
- 6 (2) The debtor's history of filings and dismissals;
- 7 (3) Whether the debtor's only purpose in filing for Chapter 13 protection is to
8 defeat state court litigation; and
- 9 (4) Whether egregious behavior is present.

10 To determine bad faith, the court must review the totality of the circumstances. Such an
11 analysis examines "whether the debtor misrepresented facts in his [petition or] plan, unfairly
12 manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an
13 inequitable manner." *Leavitt, supra*, 171 F.3d at 470 (internal quotation omitted); see also, *In re*
14 *Lehr*, 479 B.R. 90 (Bankr. N.D. Cal. 1990) (dismissal appropriate where debtor made knowing
15 and fraudulent false statements in filing schedules). Moreover, "[b]ad faith exists where the
debtor only intended to defeat state court litigation." *Leavitt, supra*, 171 F.3d at 470.

16 Here, the Debtor did not propose his Plan in good faith, nor did he file the Petition in
17 good faith, as required under 11 U.S.C. §1325(a)(3) and (a)(7). First, the Debtor filed his
18 Petition the day before Moving Parties were going to apply to the Santa Clara County Superior
19 Court for the enforcement of the settlement the Debtor agreed to in the written Settlement Term
20 Sheet. Second, since the Debtor has significant assets compared to his debts, it is evident that the
21 sole reason he filed bankruptcy was to defeat Moving Parties' efforts to enforce the settlement of
22 the state court litigation. Third, the Debtor misrepresented his marital status, failed to disclose
23 the Association's secured claim, and failed to disclose his financial obligations under the
24 Settlement Term Sheet, all to create the false impression that he was eligible for relief under
25 Chapter 13 of the Bankruptcy Code. Fourth, after filing for bankruptcy, the Debtor sent email
26 communications to the Vanni Creditors indicating that he had only sought bankruptcy protection
27 to avoid the settlement reached in the state court action. (*See* Exhibits 10-13 to Declaration of
28 Chris Vanni.)

1 The facts in the present case, therefore, warrant a finding that the Debtor filed his petition
2 and proposed his plan in bad faith. The facts, including the Debtor's misrepresentations and his
3 concealment of claims to create the false impression that he is eligible for Chapter 13 relief, and
4 his use of this bankruptcy to evade a judgment in state court, all constitute egregious conduct that
5 warrant a strong response from the Court. As such, the Moving Parties request that the Court
6 dismiss the Chapter 13 petition or convert it to Chapter 7.

7 **E. Dismissal of this Case or Conversion to Chapter 7 is in the Best Interests of**
8 **Creditors and the Estate.**

9 Based on the assets and liabilities of the Debtor, the Debtor has the resources to pay his
10 creditors in full. A prompt resolution of the state court litigation would leave the Debtor with
11 more than sufficient assets to pay his creditors in full.

12 In a case such as this, where the debtor is not eligible for Chapter 13 relief and he did
13 not act in good faith, the court should exercise its discretion and dismiss the case or at least
14 convert the case to Chapter 7 if doing so is in the best interests of creditors and the estate. To
15 that end, this case bears similarities to *In re Toronto*, 165 B.R. 746 (Bankr. D. Conn. 1994),
16 wherein the court found that the debtors were not eligible for Chapter 13 due to §109(e) and
17 converted the case to Chapter 7.

18 Chapter 13 relief is reserved for the "honest but unfortunate debtor." (*In re Alt*, 305 F.3d
19 413, 422 (6th Cir. 2002).) As evidenced by the facts described above, one may reasonably
20 conclude that the Debtor is neither honest nor unfortunate. For the reasons stated above, Moving
21 Parties contend that dismissal of the case or conversion of this case to Chapter 7 would best serve
22 the interests of creditors and the estate since conversion to Chapter 7 will permit the orderly
23 liquidation of the Debtors' assets for the benefit of creditors and the estate.

24 **F. Public Policy favors dismissal of the Debtor's Case.**

25 In civil matters generally, there is a strong policy favoring settlement of litigation. (*In re*
26 *Marriage of Assemi* (1994) 7 Cal.4th 896, 910; *Frankel v. Board of Dental Examiners* (1996) 46
27 Cal.App.4th 534, 552; *Villa v. Cole* (1992) 4 Cal.App.4th 1327, 1338; *Fisher v. Superior Court*
28 (1980) 103 Cal.App.3d 434, 436, 441.)

1 In California, “[t]he Legislature has enacted statutes to further the strong public policy of
2 encouraging out-of-court resolution of disputes. (*Elden, supra* [*Elden v. Superior Court* (1997)],
3 53 Cal.App.4th 1497 at pp. 1507-1509; see also *Cassel v. Superior Court* (2011) 51 Cal.4th 113,
4 118.) The Legislature has imposed specific requirements for settlement agreements and provided
5 an expedient method of enforcing them.” (*In re Marriage of Woolsey* (2013) 220 Cal.App.4th
6 881, 899.)

7 Here, the Debtor’s attempt to use this bankruptcy proceeding to evade the consequences
8 and judicial enforcement of his own mediated settlement agreement is not only an abuse of the
9 bankruptcy process, it is designed to thwart the strong public policy favoring settlement under
10 California law. The Debtor’s actions are particularly egregious here because it was he who filed
11 the lawsuit against Moving Parties, and there is no dispute that he signed a written mediation
12 agreement and written settlement term sheet. To allow the Debtor to use this bankruptcy in this
13 manner would be wrong, and he should – must – be required to submit this dispute to the Superior
14 Court where it belongs, and not burden this Court and his creditors.

15 **III. CONCLUSION**

16 For the foregoing reasons, Moving Parties request the Court to dismiss this case or
17 convert this case to one under Chapter 7.

18 DATED: May 17, 2018

REHON & ROBERTS
A Professional Corporation

By: /s/ Peter M. Rehon

Peter M. Rehon

Steven M. Wheat

Creditors DONALD E. VANNI, individually and as
trustee of the Donald E. Vanni and Sharon L. Vanni
Revocable Inter Vivos Trust; DONALD E. VANNI
AND SHARON L. VANNI REVOCABLE INTER
VIVOS TRUST; and CHRIS VANNI